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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,921	09/05/2003	Kristine A. Maniscalco	03112	8619
30114	7590	04/07/2005	EXAMINER	
MERONI + MERONI P.O. BOX 309 BARRINGTON, IL 60011				VALENTI, ANDREA M
		ART UNIT		PAPER NUMBER
		3643		

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/655,921	MANISCALCO ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Andrea M. Valenti	3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 26 January 2005.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-37 and 71-75 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-28, 71-73 and 75 is/are allowed.  
 6) Claim(s) 29, 30, 32, and 74 is/are rejected.  
 7) Claim(s) 31 and 33-37 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 74 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 74 recites the limitation "the tray-support means" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 29 and 32 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Pub. No. US 2003/0106262 A1 to Lai.

Regarding Claim 29, Lai teaches a container insert for creating a false bottom in an oversized planter container (Lai Fig. 5B #30) comprising a container bottom, a container rim, and a substantially uniformly sloped inner container surface, the inner container surface extending from the container bottom to the container rim, the inner

container surface having a select container periphery intermediate the container bottom and the container rim (the term “select container periphery” does not provide a clear teaching of a specific structural feature, the oversized container of Lai has an inside surface, this inside surface functions as a container periphery (i.e. a container “boundary”) the inside surface resides between the rim and bottom so it is thus the select container periphery; examiner suggest that applicant include structural components to in the claim limitation to distinguish applicant’s invention over the cited prior art).

Lai teaches the container insert comprising: a substantially planar superior support surface (Lai Fig. 5B the top surface of the bottom of element #204), a substantially planar inferior support surface (Lai Fig. 5B the bottom surface of the bottom of element #204), a peripheral support ridge (Lai Fig. 5B element L), a plurality of support ribs (Lai Fig. 5B #22; applicant has not indicated a claim limitation that teaches the function of the claimed ribs, the examiner interprets “rib” as a protrusion from a flat surface that lends structural support to the surface. Lai element #22 lends structural support to #204 since it is in contact with the container, thus the examiner maintains that Lai teaches ribs. Applicant’s claim language does not include any teaching that the rib does not have contact with the plant container), and a plurality of matter - receiving apertures (Lai Fig. 5A #23 and 24), the peripheral support ridge comprising a sloped peripheral support surface (Lai Fig. 5B and 5A element L) and a peripheral support rim (Lai top edge of element L, “rim” can be defined as the outer curved edge if an object, thus the top edge (that is in a plane perpendicular to the side

wall of the plant container) of element L is a rim), the peripheral support surface being intermediate the superior support surface and the peripheral support rim, the peripheral support surface having a container - engaging depth (Lai Fig. 5B the portion of L in contact with #30), the support ribs being integrally formed to the inferior support surface (Lai Fig. 5B and 3B #22) and substantially equally spaced from one another, the matter - receiving apertures being spaced intermediate the support ribs and extending from the superior support surface to the inferior support surface, the peripheral support surface being in removably wedged engagement (Lai Fig. 5B the portion of L engaged with #30) with the select container periphery, the container insert thus forming a false bottom in the oversized planter container at the select container periphery (please see attached Fig. 7 and 8).

Regarding Claim 32, Lai teaches the matter - receiving apertures are defined by at least one moisture drain aperture (Lai Fig. 5A and 5b #23 and 24).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Pub. No. US 2003/0106262 A1 to Lai.

Regarding Claim 30, Lai teaches the false bottom is spatially located a substantially uniform measured distance from the container rim, but is silent on the

measured distance ranging from 6 to 8 inches. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Lai at the time of the invention since the modification is merely a change in size to accommodate different plant varieties that have different root systems and does not present a patentably distinct limitation [*In re Rose*, 220 F.2d 459, 463, 105 USPQ 237, 240 (CCPA 1955)].

### ***Response to Arguments***

Applicant's arguments, see page 40 line 16-17 that Carlson does not teach that the "sloped peripheral support surface" engages that inner surface of the pot, filed 26 January 2005, with respect to the rejection(s) of claim(s) 29, 30, 32, 36 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent Des. 352,480 to Carlson have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of U.S. Patent Pub. No. US 2003/0106262 to Lai.

Examiner suggests that applicant clarify the preamble by starting it with the statement "An oversized planter and a container insert" to clarify that it is the combination that applicant intends to claim. Currently the "oversized planter" is merely a portion of a "for use" statement merely necessitating capability not the actual structure.

Further regarding applicant's arguments concerning the ribs page 35 last paragraph, applicant has not claimed that the ribs are solid. Applicant may want to claim that the ribs are solid and radially extend from the center of the container insert to help distinguish over the prior art.

### DRAWINGS CAN BE USED AS PRIOR ART

Drawings and pictures can anticipate claims if they clearly show the structure which is claimed. *In re Mraz*, 455 F.2d 1069, 173 USPQ 25 (CCPA 1972). However, the picture must show all the claimed structural features and how they are put together. *Jockmus v. Leviton*, 28 F.2d 812 (2d Cir. 1928). The origin of the drawing is immaterial. For instance, drawings in a design patent can anticipate or make obvious the claimed invention as can drawings in utility patents. When the reference is a utility patent, it does not matter that the feature shown is unintended or unexplained in the specification. The drawings must be evaluated for what they reasonably disclose and suggest to one of ordinary skill in the art. *In re Aslanian*, 590 F.2d 911, 200 USPQ 500 (CCPA 1979). See MPEP § 2121.04 for more information on prior art drawings as "enabled disclosures."

PICTURES MAY CONSTITUTE AN "ENA-BLING DISCLOSURE" - Pictures and drawings may be sufficiently enabling to put the public in the possession of the article pictured. Therefore, such an enabling picture may be used to reject claims to the article. However, the picture must show all the claimed structural features and how they are put together. *Jockmus v. Leviton*, 28 F.2d 812 (2d Cir. 1928).

### ***Allowable Subject Matter***

Claims 31 and 33-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

It appears as though applicant has invoked 35 U.S.C. 112 sixth paragraph means plus function in claim 36. The manual removal means is defined on page 11, first paragraph, last sentence.

Claim 74 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 1-28, 71-73, and 75 are allowed. Reasons for allowance were provided in the office action mailed 28 October 2004.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Andrea M. Valenti*  
Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

01 April 2005